



(4310-4J-P)

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Santee Sioux Nation – Title XXI – Alcohol, Chapter 1. – Santee Sioux Nation Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Title XXI – Alcohol, Chapter 1. – Santee Sioux Nation Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Indian Country of the Santee Sioux Nation. The land is trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the jurisdiction of the Santee Sioux Nation. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their jurisdiction, and at the same time will provide an important source of revenue, the strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective [date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Danelle Daugherty, Tribal Government Officer, Great Plains Regional Office, Bureau of Indian Affairs, 115 4th Avenue SE, Aberdeen, South Dakota 57401, Phone: (605) 226-7376; Fax: (605) 226-7379; or De Springer, Office of

Indian Services, Bureau of Indian Affairs, 1849 C Street NW, MS-4513-MIB, Washington, DC 20240; Telephone (202) 513-7640.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Santee Sioux Tribal Council adopted this Ordinance by Resolution No. FY2013-12 on December 17, 2012.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary – Indian Affairs. I certify that the Santee Sioux Tribal Council duly adopted Title XXI – Alcohol, Chapter 1. – Santee Sioux Nation Liquor Control Ordinance by Resolution No. FY2013-12 on December 17, 2012.

Dated: January 16, 2013

Kevin K. Washburn
Assistant Secretary – Indian Affairs.

The Santee Sioux Nation’s Title XXI – Alcohol , Chapter 1 – Santee Sioux Nation Liquor Control Ordinance shall read as follows:

Section 1. Title.

This Chapter of Title XXI of the Santee Sioux Nation Law and Order Code shall be known as the “Santee Sioux Nation Liquor Control Ordinance.”

Section 2. Authority.

This Ordinance is enacted pursuant to the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. Sec. 1161, by the authority of the Santee Sioux Tribal Council under the Constitution and Bylaws of the Santee Sioux Nation, Article IV, Sections 1(i) and (q).

Section 3. Revocation of Prior Ordinance.

All ordinances and resolutions of the Santee Sioux Nation regulating, authorizing, prohibiting, or in any wise dealing with the sale of liquor heretofore enacted or now in effect, including but not limited to all prior versions of the Santee Sioux Nation Liquor Control Ordinance, are hereby repealed and of no further force and effect.

Section 4. General Purpose.

The purpose of this Ordinance is to provide civil laws for the Tribal regulation and control of liquor within the Santee Sioux Nation Reservation. This law is enacted to regulate the sale and distribution of liquor and beer products on all properties within the limits of the Santee Sioux Nation Reservation, and to generate revenue needed for Tribal programs and services. It is the legislative intent of the Tribal Council that all violations of this Ordinance, whether committed by Tribal members, non-member Indians, or non-Indians be considered civil in nature rather than criminal.

Section 5. Declaration of Public Policy and Purposes.

A. The introduction, possession, and sale of liquor on the Santee Sioux Nation Reservation are matters of special concern to the Santee Sioux Nation.

B. Federal law prohibits the introduction of liquor into Indian Country (18 U.S.C. Sec. 1154 and other statutes), except as provided therein, and expressly affirms and delegates to Tribes the governmental authority to regulate and control liquor on Indian Reservations. (18 U.S.C. Sec. 1161)

C. It is in the best interests of the Nation to enact a Tribal Ordinance governing liquor sales on the Reservation which provides for exclusive purchase, distribution, and sale of liquor only on Tribal lands within the exterior boundaries of the Reservation. Further, the Nation has determined and hereby requires that said purchase, distribution, and sale shall take place only at Tribally-owned gaming facility complexes and other Tribally-owned enterprises.

Section 6. Definitions.

A. As used in the title, these words shall have the following meanings unless the context clearly requires otherwise.

1. “Alcohol” means that substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, ethanol, or spirits of wine, from whatever source or by whatever process produced.
2. “Bar” means any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises.
3. “Beer” means any alcoholic beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in water.
4. “Liquor” includes all fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain alcohol.

5. “Liquor Store” means any store at which liquor is sold and, for the purpose of this Ordinance, including stores only a portion of which are devoted to sale of liquor.
6. “Malt Liquor” means beer, strong beer, ale, stout and porter.
7. “Nation” means the Santee Sioux Nation.
8. “Package” means any container or receptacle used for holding liquor.
9. “Person” means any natural person, firm, partnership, joint venture association, corporation, municipal corporation, estate, trust, business receiver, or any group or combination acting as a unit and the plural as well as the singular in number.
10. “Public Place” includes State, County, Tribal or Federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.
11. “Reservation” means all territory within the exterior boundaries of the area recognized as the Santee Sioux Nation’s Reservation and all current land and future acquired land which is located outside of said boundaries over which it is possible to extend the Nation’s jurisdiction or authority, including, without limitation, fee lands, territory consisting of Indian country of the Nation or of its members, and all property held by the United States in trust for the Nation or for a member of the Nation.

12. “Sale” and “Sell” include exchange, barter and traffic, and also include the selling or supplying or distributing of liquor, by any means whatsoever, by any person to any person.
13. “Spirits” means any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.
14. “Tribal Council” means the governing body of the Santee Sioux Nation.
15. “Tribal Court” means the Santee Sioux Nation Tribal Court.
16. “Wine” means any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent of alcohol by weight.

Section 7. Rules, Regulations and Enforcement.

A. It shall be a violation of this Ordinance for any person:

1. To in any manner introduce, sell, offer for sale, distribute, transport, consume, use or possess liquor on the Reservation except as expressly permitted by this Ordinance;
2. To buy liquor on the Reservation from any person other than a Tribally-licensed and Tribally-owned gaming facility complex or other Tribally-licensed and Tribally-owned enterprise;
3. Engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, to permit any person to drink liquor in any public conveyance or for any person to consume liquor in a public conveyance;

4. Under the age of 21 years to consume, acquire or have in possession any liquor.

No person owning or controlling a premises shall permit any other person under the age of 21 to consume liquor on such premises except as expressly exempted by this Ordinance;

5. To sell or provide any liquor to any person under the age of 21 years;

6. To transfer in any manner an identification of age to a person under the age of 21 years for the purpose of permitting such person to obtain liquor; provided, that there is corroborative testimony of a witness other than the underage person;

7. To attempt to purchase liquor through the use of false or altered identification which falsely purports to show the individual as being over the age of 21 years; or

8. To possess, introduce or consume liquor at a place or premises that is or would be considered a public, common or other nuisance under any Tribal, State or Federal statutory or common law.

B. Any person who promotes any activity or owns or controls land on which there is any activity that is a violation of this Ordinance shall be liable for and subject to the same penalties and proceedings as the person who directly commits the violation.

C. Any person who commits a violation of this Ordinance shall be liable to pay the Nation up to \$5,000 per violation as civil penalties.

D. When requested by the provider of liquor, every person shall be required to present official documentation of the bearer's age, signature, and photograph. Official documentation includes one of the following:

1. Driver's license or identification card;

2. United States Active Duty Military card; or

3. Passport.

E. Liquor which is possessed contrary to the terms of this Ordinance is declared to be contraband. Any Tribal agent, employee, or officer who is authorized by the Tribal Council to enforce this Ordinance shall seize all contraband and preserve it in accordance with the provisions established for the preservation of impounded property. Upon being found in violation of the Ordinance, the party shall forfeit all right, title and interest in the items seized which shall become the property of the Nation.

Section 8. Abatement.

A. Any room, house, building, vehicle, structure, land, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, consumed or possessed or otherwise disposed of in violation of the provisions of this Ordinance or of any other Tribal law, and all property kept in and used in maintaining such place, is hereby declared to be a nuisance.

B. The Chairman of the Tribal Council or, if the Chairman fails or refuses to do so, by a majority vote, the Tribal Council may institute and maintain an action in the Tribal Court in the name of the Nation to abate and perpetually enjoin any nuisance declared under this Article. In addition to other remedies at Tribal law, depending upon the severity of past offenses, the risk of offenses in the future, the effect of the violator's activity on public health, safety or welfare and any other appropriate criteria, the Tribal Court may order the room, house, building, vehicle, structure, land, or place closed or it may require the owner, lessee, tenant, or occupant thereof to give bond payable to the Nation, of sufficient sum and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, possessed, consumed, or otherwise disposed of in violation of the provisions of this Ordinance or of any other applicable Tribal law and that such person will pay all penalties, fees, costs, and damages

assessed against him for any violation of this Ordinance or other Tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Nation. No order or injunction closing any business for a violation of this Ordinance shall be issued without granting the opportunity to have a full evidentiary and adversary hearing.

C. In all cases where any person has been found in violation of this Ordinance, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Ordinance, and violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, land or place against which such action is brought is a public nuisance.

Section 9. Powers of Enforcement.

A. In furtherance of this Ordinance, the Tribal Council shall have the following powers and duties:

1. To publish and enforce rules and regulations governing liquor on the Reservation;
2. To employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions;
3. To issue licenses permitting the sale, manufacture or distribution of liquor on the Reservation;
4. To bring proceedings in the Tribal Court or other appropriate forum to enforce this Ordinance as necessary;
5. To seek penalties, taxes, damages, fees, and other appropriate remedies, orders and injunctions for the violation of this Ordinance;
6. To make such reports as may be required; and

7. To collect taxes and fees levied or set by the Tribal Council and to keep accurate records, books, and accounts.

B. In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members shall not:

1. Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

2. Waive the immunity of the Nation from suit without the express written consent and resolution of the Tribal Council.

C. Inspection Rights. All premises on which liquor is sold, consumed, possessed, or distributed shall be open for inspection by the Tribal Council or its designee at all reasonable times for the purpose of ascertaining whether the rules and regulations of the Tribal Council and this Ordinance are being complied with.

D. Hearings and Appeals. Violations of this Ordinance shall be deemed a civil offense against the Nation. Civil actions by the Nation against violators may proceed in hearings initiated and held by the Nation's Tax Commissioner or other hearing officer designated by Tribal Council. Any such civil proceeding shall comply with all due process requirements of the Indian Civil Rights Act. The Tax Commissioner or the designee may impose penalties, damages, costs, taxes and attorneys' fees and take any other actions reasonably necessary to carry out this Ordinance. Liabilities imposed under this Ordinance shall be a lien upon the violator's property located on the Reservation until paid and may be enforced and executed upon through the Tribal Court. Orders issued hereunder may be appealed to Tribal Court and considered under the arbitrary and capricious standard of review.

Section 10. Sales of Liquor.

- A. License Required. Sales of liquor on the Reservation may only be made at businesses which hold a Santee Sioux Nation Liquor License.
- B. Sales for Cash. All liquor sales on the Reservation shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that the provision does not prevent the payment for purchases with use of credit cards such as Visa, MasterCard, American Express, etc.
- C. Sale for Personal Consumption. All sales shall be for the personal use and consumption of the purchaser. Resale of any liquor on the Reservation is prohibited. Any person (including but not limited to any Tribally-owned enterprise) who is not licensed pursuant to this Ordinance and who purchases liquor on the Reservation and sells it, whether in the original container or not, shall violate this Ordinance.

Section 11. Licensing.

- A. Procedure. In order to control the consumption of liquor and the proliferation of establishments on the Reservation which sell or serve liquor by the bottle or by the drink, all Tribally-owned enterprises which desire to sell liquor on the Reservation must apply to the Nation for a license.
- B. Application. Any Tribally-owned enterprise applying for a license to sell or serve liquor on the Reservation must fill in the application provided for this purpose by the Nation and pay such application fee as may be set from time to time by the Tribal Council for this purpose. Said application must be filled out completely in order to be considered.
- C. Issuance of License. The Tribal Council may issue a license if it believes that such issuance is in the best interests of the Nation. This Ordinance permits Tribally-licensed liquor sales and consumption at gaming facility complexes and other Tribally-owned enterprises on the

Reservation. Issuance of a license for any other purposes will not be considered to be in the best interests of the Nation.

D. Period of License. Each license may be issued for a period not to exceed two (2) years from the date of issuance.

E. Renewal of License. A licensee may renew its license if the licensee has complied in full with this Ordinance, provided however that the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the Nation.

F. Revocation of License. The Tribal Council may suspend or revoke a license due to one or more violations of this Ordinance upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

G. Hearings. Within 15 days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of penalties or of other adverse action proposed by the Tribal Council under this Ordinance, the licensee may deliver to the Tribal Council a written request for hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Tribal Council and a written decision will be issued. Such decisions will be considered final unless an appeal is filed exclusively with the Tribal Court within 15 days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order using an arbitrary and capricious standard of review. All proceedings conducted under this and any other sections of this Ordinance shall be in accordance with due process of law. The responsibility, duty, and burden shall be on the licensee to keep its address for receiving adverse actions or decisions

updated and available to the Tribal Council and to accept any certified mail from the Tribe or its designee for the purposes of communicating such adverse actions or decisions.

H. Non-transferability of Licenses. Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Section 12. Taxes.

A. Sales Tax. The Tribal Council shall have the authority, as may subsequently be specified under Tribal law, to levy and to collect a tax on each retail sale of liquor on the Reservation based upon a percent of the retail sales price. All taxes from the sale of liquor on the Reservation shall be paid over to the General Treasury of the Nation.

B. Taxes Due. All taxes for the sale of liquor on the Reservation are due on the 15th day of the month following the end of the calendar quarter for which the taxes are due or on such other dates as specified by Tribal regulation.

C. Delinquent Taxes. Past due taxes shall accrue interest at 2% per month.

D. Reports. Along with payment of the taxes imposed herein, the taxpayer shall submit a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

E. Audit. As a condition of obtaining a license, the licensee must agree to the review or audit of its book and records relating to the sale of liquor on the Reservation. Said review or audit may be done periodically by the Nation or through its agents or employees whenever, in the opinion of the Tribal Council, such a review or audit is necessary to verify the accuracy of reports.

Section 13. Revenue.

Revenue collected under this Ordinance, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Ordinance. Excess funds shall be subject to appropriation by the Tribal Council for governmental and social services, including, but not limited to, education, prevention and treatment programs to fight alcohol abuse on the Reservation.

Section 14. Exceptions.

A. The introduction, distribution, transport, consumption, sale, offer for sale, use, consumption and possession of liquor is permitted:

1. For consumption at a gaming facility complex or other Tribally-owned enterprise;
2. For scientific research or manufacturing products other than liquor;
3. For medical use under the direction of a physician, medical or dental clinic, or hospital;
4. For preparations not fit for human consumption such as cleaning compounds and toilet products, and for flavoring extracts; or
5. For sacramental use such as wines delivered to priests, rabbis, and ministers.

B. The introduction, distribution, transport, consumption, use and possession of liquor for personal consumption by a person legally present on private, non-commercial property are permitted, subject to applicable Tribal law.

C. These exceptions shall be narrowly construed.

Section 15. Compliance with 18 U.S.C. 1161.

The Nation will comply with Nebraska liquor laws to the extent required by 18 U.S.C. 1161.

Section 16. Severability and Effective Date.

A. If any provision or application of this Ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

B. This Ordinance is effective immediately upon publication in the **Federal Register**.

Section 17. Amendment and Construction.

A. This Ordinance may only be amended by a vote of the Tribal Council or as otherwise allowed by Tribal law and all such amendments shall not be effective until thirty days after the date of publication in the **Federal Register**.

B. Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Nation or Tribal government.